

393107

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY,

Plaintiff,

vs.

HAWAII EXPRESS SERVICE, INC., et
al.,

Defendants.

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) CIVIL NO. CV 03 00385 SOM LEK

) (Copyright)

)

) THE POST CONFIRMATION TRUST

) FOR THE FLEMING COMPANIES,

) INC.'S MOTION IN LIMINE NO. 6

) REGARDING ALLEGED

) UNRELATED BAD ACTS

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) DATE: January 20, 2006

) TIME: 2:00 p.m.

) JUDGE: Honorable Susan O. Mollway

) Trial Date: January 24, 2006

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THE POST CONFIRMATION TRUST FOR THE FLEMING COMPANIES,
INC.'S MOTION IN LIMINE NO. 6 REGARDING
ALLEGED UNRELATED BAD ACTS

COMES NOW Defendant the Post-Confirmation Trust for the Fleming
Companies, Inc. ("PCT") by and through its attorneys, Kobayashi, Sugita & Goda,
and hereby moves this Honorable Court in limine for an Order barring Plaintiff
Wayne Berry from introducing or in any way referring to any and all evidence of
other unrelated grievances, complaints, lawsuits, alleged or proven violations of
the law, and any other acts including, but not limited to: (a) allegations that the

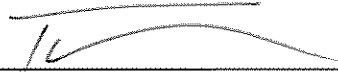
Fleming Companies are still in operation (including, but not limited to any reference to a scheme to sell re-pasteurized milk); (b) communications with the FBI, (c) Al Qaeda, (d) terrorists, (e) cigarette smuggling (including, but not limited to any reference to Lokelani Lindsey), (f) K-Mart, (g) armed gunmen, (h) references to attorneys' fees stemming from prepetition trial, (i) references to the SEC investigation / PCT's complaint on that issue, (j) anything having to do with API, in particular allegations that Fleming stole API's accounts receivable, (k) any reference to Plaintiff's purported motivations in creating FCS (i.e., to create cost savings that could be passed on to Hawaii consumers) or that Fleming used FCS to overcharge Hawaii consumers; (l) representations that software development is important to Hawaii's economy, and that it is therefore crucial that an independent Hawaii software developer be protected from a national company's attempts to infringe on his intellectual property; and (m) any references to pornography or evidence of pornography purportedly found on the "Guidance Image" computer drives.

This motion is based upon Rule 7 of the Federal Rules of Civil Procedure and Rules 401, 402, 403, and 404 of the Federal Rules of Evidence, and is supported by the Memorandum in Support of Motion, Declaration of Lex R. Smith,

and Exhibits attached hereto and the records and files herein.

Dated: Honolulu, Hawaii, January 3, 2006.

KOBAYASHI, SUGITA & GODA



BERT T. KOBAYASHI, JR.
LEX R. SMITH
THOMAS H. YEE
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THE POST CONFIRMATION
TRUST FOR THE FLEMING
COMPANIES, INC.

and

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Trust for Fleming Companies, Inc.